



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0032]

RIN 1625-AA00

Artificial Island Anchorage No. 2 Partial Closure, Delaware River; Salem, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard will be establishing a temporary safety zone around the southern portion of Anchorage #2 (Artificial Island Anchorage) below position 39° 29' 20" N - 075° 33' 30" W to position 39° 29' 12.5"N - 075° 33' 0"W due to dredging operations. The hopper dredge STUYVESANT will be working in the area, and 4,000 feet of submerged pipe line will cross the closed portion of the anchorage. This regulation is necessary to provide for the safety of life on the navigable waters of the Artificial Island Anchorage. This closure is intended to restrict vessel anchoring to protect mariners from the hazards associated with an ongoing dredging operation.

DATES: This rule is effective on [INSERT DATE OF

PUBLICATION IN THE FEDERAL REGISTER] until June 15, 2013, unless cancelled earlier by the Captain of the Port. This rule has been enforced with actual notice from February 1, 2013, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0032. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Veronica Smith, Waterways Management Branch, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271-4851, e-mail [veronica.l.smith@uscg.mil](mailto:veronica.l.smith@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because final details for this dredging operation were not provided until January 24, 2013. As such, it is impracticable to provide a full comment period due to lack of time. The dredging operation will begin on February 1, 2013 and will continue until June 15, 2013 unless completed earlier.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than

30 days after publication in the Federal Register because immediate action is necessary to protect the maritime public and facilitate the dredging operation, and therefore a delay in enacting this safety zone would also be impracticable

B. Basis and Purpose

Dutra Dredging Company has been contracted by the Army Corps of Engineers on the Delaware River channel deepening project. A portion of this project requires the use of submerged and floating pipelines crossing the lower portion of the Artificial Island Anchorage (No. 2). Due to the presence of the submerged pipeline, vessels are not permitted to anchor in the southern portion of the anchorage. This regulation is necessary because there will be an ongoing dredging operation to deepen the Delaware River channel in the Reedy Island Range from February 1, 2013, until June 15, 2013. The Captain of the Port will reopen this portion of the anchorage once all submerged pipeline has been recovered and dredging operations are completed. At such time, notice that the temporary closure of the anchorage is no longer in effect will be broadcast to mariners. The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

### C. Discussion of the Final Rule

The Coast Guard Captain of the Port Delaware Bay is temporarily establishing a safety zone closing the southern portion of Artificial Island Anchorage from February 1, 2013, until June 15, 2013, unless cancelled earlier by the Captain of the Port. The boundary line for the temporary safety zone includes the southern portion of Artificial Island Anchorage, below position 39° 29' 20" N - 075° 33' 30" W to position 39° 29' 12.5"N - 075° 33' 0"W and extending to the southern boundary according to NOAA chart 12311. Vessels will not be permitted to anchor in this portion of Artificial Island Anchorage.

### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1

of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) the Coast Guard will make extensive notification of the closure to the maritime public via maritime advisories so mariners can alter their plans accordingly, and (ii) this rule will be enforced for only the duration of dredging operations.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of the vessels intending to anchor in the southern portion of Artificial Island Anchorage from February 1, 2013, until June 15, 2013, unless cancelled earlier by the Captain of the Port.

The Coast Guard certifies under 5 U.S.C. 605(b) that

this rule will not have a significant economic impact on a substantial number of small entities. Vessels will be allowed utilize the upper portion of Artificial Island Anchorage and nearby anchorages with permission of the Coast Guard Captain of the Port Delaware Bay or her representative. Sector Delaware Bay will issue maritime advisories widely accessible to users of the Anchorage informing them of the safety zone.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to

comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.



## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## 10. Protection of Children

We have analyzed this rule under Executive Order

13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessels from utilizing the southern portion of Artificial Island Anchorage in order to protect the safety of life and property on the waters while dredging operations are conducted. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add 165.T05-0032, to read as follows:

§ 165.T05-0032\_ Safety Zone Within the Lower Portion Of Anchorage #2, Artificial Island Anchorage; Salem, NJ.

(a) Location. The southern portion of the Anchorage #2 (Artificial Island Anchorage), below position 39° 29' 20" N - 075° 33' 30" W to position 39° 29' 12.5"N - 075° 33' 0"W and extending to the southern boundary according to NOAA chart 12311.

(b) Enforcement period. This section is enforced February 1, 2013, until June 15, 2013, unless cancelled earlier by the Captain of the Port.

(c) Regulations. All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23.

(1) All persons and vessels utilizing the southern portion of the anchorage must be authorized by the Captain of the Port or her representative.

(2) This section applies to all vessels wishing to anchor in the safety zone within Artificial Island Anchorage except vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation; and
- (iii) Emergency response vessels.

(3) No person may bring or cause to be brought into the safety zone any vehicle, vessel, or object unless authorized by the Captain of the Port.

(4) No person or vessel may enter or remain in the safety zone without the permission of the Captain of the Port.

(5) Each person and vessel in the safety zone shall obey any direction or order of the Captain of the Port.

Dated: February 1, 2013

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T. C. Wiemers

CAPT, U.S. Coast Guard

Alternate Captain of the Port Sector Delaware Bay

[FR Doc. 2013-03550 Filed 02/14/2013 at 8:45 am;

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